

ROBINSON, ROBINSON & FOGLEMAN, P.A.

ATTORNEYS AT LAW

POST OFFICE BOX 2720

SARASOTA, FLORIDA 34230-2720

LAWRENCE J. ROBINSON
LINDA BROOKS ROBINSON
ROSS L. FOGLEMAN III

100 WALLACE AVENUE
SUITE 380
(813) 365-4400

April 29, 1988

Sid White
Clerk of Court
Supreme Court of Florida
Tallahassee, FL 32399-1927

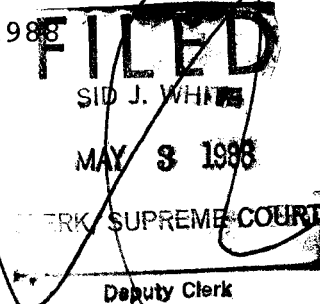
Re: Case no. 71,672

Dear Sir:

I have reviewed the proposed rules for presuit screening and court-ordered arbitration in medical malpractice actions as submitted to the court by the Civil Procedure Rules Committee and as printed in the Florida Bar News, April 1, 1988. I would like to make a comment regarding the provisions included in Section 4(c) under "Time Requirements". Paragraph C reads:

To avoid being barred by the applicable statute of limitations, suit must be filed within sixty (60) days or within the remainder of the time on the statute of limitations at the time the Notice of Intent to Initiate Litigation was mailed, whichever is greater, after the earliest of the following:...

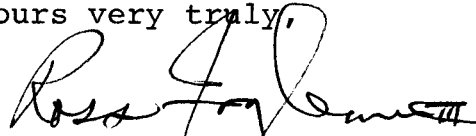
I take exception to the provision giving the plaintiff an additional sixty days after the expiration of the 90-day presuit screening period to file suit in order to avoid being barred by the applicable Statute of Limitations. Florida Statutes 768.57 does not grant any additional 60-day extension to the statute of limitations except when there has been a specific stipulation of the parties that the 90-day period may be extended. The effect of paragraph C is to create a judicially sanctioned extension to the statutory limitations period, which is in conflict with the legislature's specific intent, as evidenced in the statute. The Supreme Court, through its rule making powers, has no authority to alter the statutorily imposed times beyond which a claim will be barred by the statute of limitations. Although in conflict of laws situations a statute of



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limitations is regarded as being procedural in character because it effects the remedy [Strauss v. Sillin, 393 So.2d 1205 (2d DCA 1981)] the general rule is that statutes setting forth limitations of actions are generally substantive in nature and courts may not, by rule of practice either through statutory or inherent rule making authority, amend or abrogate a right resting in substantive law. Lundstrom v. Lyon, 86 So.2d 771 (Fla. 1956). By giving a plaintiff an additional sixty days beyond the 90-day period tolling the statute which is specified in Florida Statutes § 768.57, the court would be impermissibly changing the substantive law regarding the applicable statute of limitation.

Yours very truly,



Ross L. Fogleman III
Florida Bar #310603

RLF/lm